

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 03.04.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.1794 of 1999

S.Anandan .. Appellant/3rd Party

Vs.

1.V.Kanniappan

2.The Chairman,
Tamil Nadu Slum Clearance
Board, Rajaji Salai,
Madras-600 005.

3.The Estate Officer-3,
Tamil Nadu Slum Clearance
Board, Vyasarpadi,
Madras-600 039.

.. Respondents/Petitioner/
Respondents 1& 2

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 23.12.1997 made in W.P.No.6087 of 1997 to issue a Writ of Mandamus directing the respondents to execute the sale deed in respect of the Plot No. 723, Door No. 322, Manimegalai Street, Periyar Nagar, Vysarpadi, Madras-39, admeasuring the site extent of 69.5 square meteres allotted under order dated 8/4/92

For Appellant : Mr.C.Umashankar
For 1st Respondent : Mr.S.V.Jayaraman, S.C., for
Mr.K.Chellathurai
For respondents 2 & 3: Mr.Y.Bhuvaneshkumar

JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM, J.)

Aggrieved by the order of the learned single Judge dated 23.12.1997 made in W.P.No.6087 of 1997, the present appellant S.Anandan, who is the

third party in the writ proceedings, has filed the above writ appeal.

2. Heard the learned counsel appearing for the appellant, learned Senior Counsel for the first respondent and learned Standing Counsel for respondents 2 and 3.

3. Considering the controversy in dispute between the appellant and the first respondent, we directed the learned counsel appearing for the Tamil Nadu Slum Clearance Board, Chennai, to submit a report. Pursuant to the same, the learned counsel appearing for the Tamil Nadu Slum Clearance Board has filed the report dated 03.04.2007, wherein it is stated that Plot No.723 measuring about 69.5 sq.mts in Periyar Nagar, which is the subject matter in the writ appeal was originally allotted by respondents 2 and 3 in their order dated 08.04.1982 to the first respondent herein-writ petitioner viz., Kanniappan. The first respondent-writ petitioner Kanniappan had executed an unregistered sale deed dated 04.08.1983 to Anandan, the appellant herein. Based on the same, the Plot was subdivided as Plot Nos.723 and 723-A and plot No.723 which measures about 34 sq.mts is in the name of first respondent/writ petitioner-Kanniappan and Plot No.723-A, which measures about 35.5. sq.mts is in the name of writ appellant-Anandan.

4. The report further shows that based on the sub division, respondents 2 and 3 had allotted plot No.723-A in the name of Anandan-appellant vide proceedings reference No.7359/E2/95 dated 23.03.1995. Since the entire cost of plot No.723-A was paid, respondents 2 and 3 had issued No Objection Certificate for obtaining Electricity and Sewerage connections.

5. The report further mentions that the first respondent-writ petitioner-Kanniappan had filed civil suit in O.S.No.5522 of 1995 before the XVII Assistant Judge, City Civil Court, Chennai. In view of the pendency of the civil proceedings, respondents 2 and 3 did not execute the sale deed in favour of Kanniappan. Subsequently, he filed W.P.No.6087 of 1997 seeking to issue a writ of Mandamus to direct respondents 2 and 3 to execute sale deed in respect of Plot No.723 and by an order dated 23.12.1997, this Court issued direction at the admission stage for execution of sale deed in favour of the writ petitioner. The facts relating to the abovesaid suit filed by the writ petitioner, in which the writ appellant was the third defendant was not placed before this Court and no counter affidavit was filed by both highlighting their stand. It is further stated that respondents 2 and 3 in order to comply with the order passed in the writ petition on 11.03.1999, cancelled the order of allotment that was made on 23.03.1995 in favour of the appellant after issuance of show cause notice on 13.1.1998. The report further shows that since the writ petitioner had sold half of plot No.723 which measures 35.5. sq.mts to the appellant-Anandan, the CMDA had also subdivided and approved the land measuring about 35.5. sq.mts that was allotted to the appellant-Anandan. On receipt of notice in the writ

appeal, respondents 2 and 3 did not execute the sale deed in favour of the writ petitioner as ordered by the learned single Judge.

6. The learned counsel appearing for the appellant as well as the learned Senior Counsel appearing for the first respondent reiterated their stand with reference to Plot No.723 and 723-A. In view of the controversy as seen from the report of respondents 2 and 3, we are of the view that there cannot be any positive direction to the Tamil Nadu Slum Clearance Board, Chennai, at this juncture. Their right or entitlement cannot be gone into either by this Court or even by the Tamil Nadu Slum Clearance Board, Chennai. It is for the respective parties viz., appellant and the first respondent to establish their right, title in the property in dispute by approaching the competent Civil Court. After getting appropriate order from the competent Court, they are free to approach the Tamil Nadu Slum Clearance Board for necessary orders including for execution of sale deed in their favour. In view of the admitted factual position that both the appellant and the first respondent are in enjoyment of their respective shares, the same position shall continue and as observed earlier, after getting an order from the competent Court, they are free to approach the Tamil Nadu Slum Clearance Board for necessary orders.

7. With the above observation/clarification, the writ appeal is disposed of. No costs.
raa

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Chairman, Tamil Nadu Slum Clearance
Board, Rajaji Salai, Madras-600 005.

2.The Estate Officer-3, Tamil Nadu Slum Clearance
Board, Vyasarpadi, Madras-600 039.

+ One cc to Mr. K. Sellathurai Advocate sR 21454
+ One cc to Mr. C. Umashankar Advocate sR 21360
+ One cc to Mr. Y. Bhuvanesh Kumar Advocate sR 21302

NSM (co)

sg 11/4/07

W.A.No.1794 of 1999
03.04.2007